



SUMMARY

Evaluation of the Squatting
Ban Enforcement Act

The Situation after the New Act



On behalf of

Research and Data Centre (WODC)

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Titel

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Subtitle

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Summary

On 1 July 2022, the Squatting Ban Enforcement Act came into force. The main purpose of the new law is to shorten the turnaround time in the event of a criminal eviction of a squatted property. Whereas the squatters previously had the option of filing summary proceedings against the intended eviction with the preliminary relief judge, it is now the examining magistrate who decides on the eviction claim within three days. In this way, the legislator wants to prevent the 'housing model' for squatters.¹

During the parliamentary discussion of the law initiative, much attention was paid to the criticism of practitioners on the procedure as a result of the new law. The Board of Procurators General, the Netherlands Bar Association, the Netherlands Association for the Judiciary, as well as the Council for the Judiciary advised (negatively) critically during the consultation round on the bill. Therefore, the Minister of Justice and Security promised to evaluate the effects of the new law within two years.

The evaluation consists of three studies: the situation before the new act came into force, the situation after and the final evaluation. The present research report describes the results of the situation after the new act came into force, which maps the situation in 2023. The central question for this study consists of the parts:

I. What is the situation regarding the nature and extent of squatting as well as the enforcement of the squatting ban in the first year after the entry into force of the law? And what changes have occurred compared to the baseline situation in the year prior to the amendment of the law?

II. What are the initial consequences of the new law for (the work processes of and administrative burden on) the police, prosecutors and judiciary on the one hand, and the legal protection of squatters on the other hand, in particular around the application of the eviction option under the law?

To enforce the squatting ban, the law provides for an offence description with a penalty provision (article 138a of the Dutch Criminal Code) and an eviction provision (article 551a of the Dutch Code of Criminal Procedure). After the report of squatting, the public prosecutor can submit a request to the examining magistrate for an eviction authorisation pursuant to Article 551a of the Code of Criminal Procedure. The examining magistrate then decides on this within 72 hours. During this period, the examining magistrate will, if possible, give the squatters the opportunity to be heard. However, this procedure only applies if the squatters have established house rights.

¹ 'Housing model' or 'housing carousel' refers to the phenomenon where squatters move from squat to squat each time, taking advantage of the legal opportunities that allow them to stay in the currently squatted premises for as long as possible.

If this is not yet the case, eviction can take place immediately (misdemeanour eviction). In addition to criminal eviction, it is also possible for the owner to initiate summary proceedings (the civil route). Eviction is also possible if living in that place violates the zoning plan (the administrative route). A final possibility is for the squatters and owner to come to a mutual agreement without interference from the courts, and to agree on the moment when the squatters will leave voluntarily.

Thirteen research questions were formulated to answer the central question. In this summary, we discuss the research findings based on these thirteen questions. The research questions refer to squatter incidents in 2023. We have interpreted this fact broadly, i.e. there is a squatting incident if the squatting and/or the (initiation of) eviction took place in 2023.

Research methods or methods of data collection

For the study, we used a combination of four research methods of data collection, namely:

- 1) Desk research. This involved studying case law, relevant studies and (social) media reports.
- 2) File research at the police. Using search terms, BVH the police administration system was searched for possible squatting incidents in 2023. This produced a file of 108 squatting incidents.
- 3) Investigation settlement by the public prosecutor. In cases in which one or more suspects have been arrested for squatting (section 138, 138a or 139 of the Criminal Code), the Prosecutor General's Office and using the police visibility system (BOSZ) mapped out the prosecutor's disposal and - where relevant - the judge's verdict.
- 4) Interviews. 16 representatives from police units, district public prosecutors' offices, district courts and law firms were interviewed.

Nature and extent of squatting incidents

As yet, there is little evidence that the introduction of the Squatting Enforcement Act is affecting the nature or extent of squatting incidents. For the year 2023 (year after the new act), we found 108 squatting incidents in BVH. In 2021 (year before the new act), this number is 128. However, there are no reasons to believe that this difference can be attributed to the introduction of the new law.

Possibly, the effect of the new law is that homeowners report more often, as they expect quick(er) evictions along the new criminal justice route.

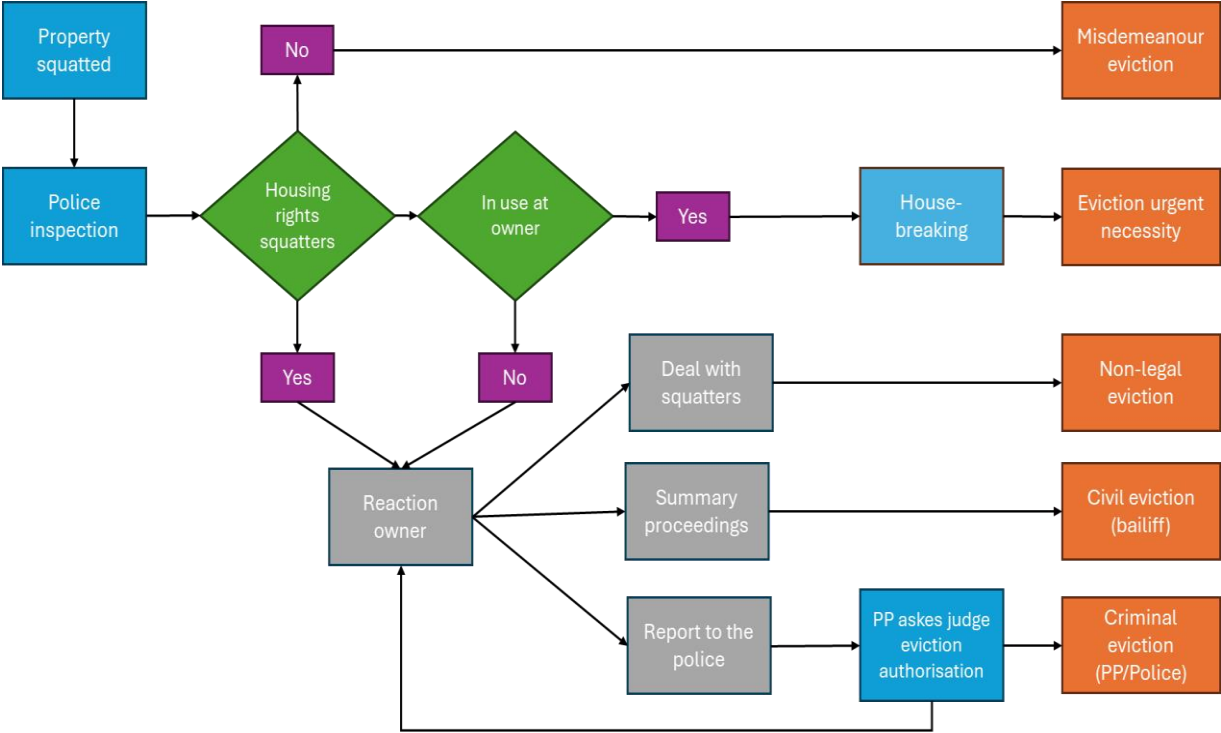
Table S.1 Nature and extent of recorded squatting incidents in 2021 and 2023

	After the new act (2023)	Before the new act (2021)
Number of registered squatting incidents	108	128
Percentage of reports	87%	73%
Property type		
- Dwelling	58%	60%
- Non-residential	40%	38%
- Land	2%	2%
Type of owner		
- Corporate	41%	34%
- Individual	19%	23%
- Foundation/corporation	14%	31%
- Government	21%	9%
- Unknown	6%	2%

Evictions of squats

There are various ways in which a squat can be evicted. The most common forms are shown schematically below.

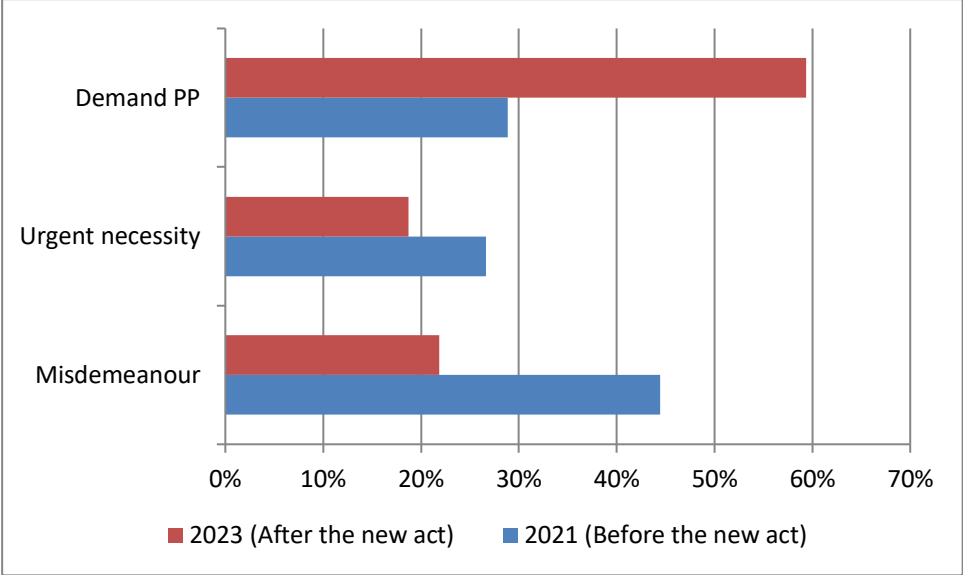
Figure S1: Most common eviction procedures under the new law



The entry into force of the Squatting Ban Enforcement Act changed the eviction procedure in the case of criminal evictions. In both measurements (before and after the new act), about one in three squatters are evicted using criminal law.

Within the criminal evictions, however, there is a different distribution. For instance, in measurement before the new act, a misdemeanour situation (no house right established) represents 44 per cent of criminal evictions; in the measurement after the new act, we record 22 per cent. This difference may be due to coincidence, but there may also be a substantive explanation.

Figure S.2 Forms of criminal evictions in 2021 and 2023



For evictions notified by the public prosecutor and possibly followed by summary proceedings instituted by the squatters (situation before the new act) or by an order of the public prosecutor after authorisation to do so by the examining magistrate (situation after the new act), the processing time and workload are important. The new law aims to reduce the processing time without leading to a substantial increase in the workload.

Work processes

The Squatting Ban Enforcement Act has brought several changes to the work processes of some of the parties involved. In this context, it is important to emphasise (once again) that the Act only applies to *evictions under criminal law*; only these evictions now have a different procedure than before. As indicated earlier, in 2023 this eviction route applies to about one-third of registered squatting incidents.

The police's working process around squatting incidents has not changed substantially with the advent of the new law. However, agreements have been made around possible misdemeanour evictions (the moment when no house right has yet been established by the squatters): the police do not decide on this independently, but always in consultation with a (squatting) prosecutor. Also, the police should ensure that the report of the owner is immediately forwarded to the (squatting) prosecutor. However, the latter does not always seem to happen in practice. As a result, sometimes unnecessary time is lost before the report actually reaches the prosecutor's office.

In the old situation, the police issued the eviction notice on behalf of the public prosecutor in the

first instance. In the new situation, it is the summons (invitation) from the examining magistrate for the hearing that the police issues to the squatters.

The substantive consideration made by the public prosecutor surrounding the eviction of the squat has not changed with the advent of the new law; however, the route along which this is done is different. In the old situation, if an eviction was decided, the squatters could take action against it through summary proceedings. In the new situation, the public prosecutor needs prior authorisation from the examining magistrate. This also applies in cases of urgent need. Before the change in the law, the public prosecutor could proceed directly to eviction if there were special circumstances. The 'special circumstances' prior to 1 July 2022 are incidentally similar to what is commonly referred to as 'urgent necessity' under the new law.

An essential difference for the public prosecutor is the fact that in the old situation, the State was represented in summary proceedings by the state attorney. In the new situation, the public prosecutor explains the demand for eviction to the examining magistrate. This also means that in the new situation, the public prosecutor is the final compiler of the file. And, by extension, the public prosecutor is the 'claimant'. Previously, the initiative lay with the squatters (summary proceedings). This 'reversal' of the burden of proof implies, according to some, that prosecutors actually have to be even better equipped than previously the state attorney.

However, the biggest change with regard to work processes can be found in the judiciary's work process. In the old situation, it was the preliminary relief judge who weighed up the interests of the State against those of the squatters, but after the Squatting Ban Enforcement Act came into force, it is the supervisory judge who makes this assessment. The period of 3 x 24 hours stipulated in the Act for the examining magistrate to reach a decision has created considerable time pressure. To direct this as well as possible in practice, the Cabinet of the examining magistrate is notified as soon as the officer intends to apply for an eviction order. The Cabinet can then look for space in the magistrate's agenda for the hearing with the officer, squatters and their lawyer.

Finally, the legal profession: for this profession, there have been no substantive changes with the advent of the new law. However, they too are under more time pressure. Space must be found in the agenda to attend the hearing of the examining magistrate at short notice. In addition, there is relatively little time to prepare the defence.

Prosecution of squatters

Squatting is punishable under Section 138a of the Criminal Code, but squatters can also be prosecuted for Section 138 of the Criminal Code (trespassing), 139 of the Criminal Code (local breach of the peace) or Section 350 of the Criminal Code (vandalism). Both before and after the introduction of the Squatting Ban Enforcement Act, squatters are in principle not arrested and prosecuted. The main exception is if squatters resist eviction - authorised by the court. In addition, 'systematic squatting' can also be a reason for arrest and prosecution.

In the measurement before the new act, 45 people were designated as suspects, with 21 of them

having their cases dismissed (47 per cent). At the measurement after the new act, we found 36 persons who were designated as suspects; for 22 of them, the case was dismissed (61 per cent). To what extent this difference in dismissal rate is related to the introduction of the Squatting Ban Enforcement Act, we were unable to determine.

Legal protection of squatters

The interviewed representatives of the standing and sitting magistrates are of the opinion that the Squatting Enforcement Act in no way undermines the legal position of squatters. The lawyers take a different view on one specific point. The new law would be at odds with Article 6 ECHR (aspect of equality of arms). In the eyes of lawyers, there would be an uneven playing field between prosecutor and lawyer in terms of preparation time for the hearing before the examining magistrate. The prosecutor can take as much time as he or she wants to prepare the case file and only when the prosecutor feels he or she has ‘come around’ can he or she proceed to file the claim. On the other hand, the lawyer's time to prepare for the hearing based on the file sent shortly beforehand. This course of action would not contribute to the squatters' legal protection.

As for the intensity of review by the examining magistrate, there are no complaints from the lawyers; it is said to have been as thorough as before in interim injunction proceedings.

Intended and unintended consequences of the legislative amendment

In anticipation of the final evaluation, we have also considered the intended and unintended consequences of the law change in the first full calendar year (2023) after the entry into force of the law. Noting here that ‘unintended’ is not the same as unforeseen, as some of the unintended effects have already been raised by some of the stakeholder organisations.

Intended effects

The submitters of the bill expect the new law to lead to (1) rapid and effective enforcement of the squatting ban; (2) discouragement of squatting as a ‘housing model’ and (3) more effective protection of the owners’ rights. In addition, faster eviction will result in less damage to the property owner, according to the initiators' expectation.

Re 1. Fast and effective enforcement of squatting ban

The speed of criminal eviction has increased. This outcome is in line with the intention of the law. For instance, in 2023, the median number of days from squatting to eviction is 34 in the event that the public prosecutor orders it, after authorisation from the magistrate. In 2021, the comparable variant of this – notice of eviction by the public prosecutor with the possibility of summary proceedings by the squatters – is 79 days.

The time gain, as anticipated, is in the procedure at the ‘claim for authorisation from the supervisory judge’ stage (the 72-hour period). On the other hand, however, the time from ‘report to requisition’ has increased, as the public prosecutor has to prepare a file in advance, which is sometimes a time-consuming activity. This extra work, and thus regular ‘delay’ in the procedure,

was already foreseen by representatives of the public prosecutor's office during the consideration of the law. However, as indicated above, there is still a 'net gain in time'.

Finally, to what extent accelerated execution of eviction leads to less destruction to the squatted property, we have not been able to establish.

Re 2. Discouraging 'housing model'

The Squatting Ban Enforcement Act also aims to prevent the 'squatting as a residential model'. According to this idea, mostly organised groups of squatters used to abuse the suspensive effect of summary proceedings. Being able to achieve eviction faster would thwart this housing model. However, if there has been a housing model at all, anno 2023, few features of it seem to be reflected in the squatting incidents. In many cases, the squatting groups active in the Netherlands tend to use squatting to raise social issues, such as vacancy and property speculation, but also the emancipation of the LGBTQA+ community, or to highlight more politically charged themes, such as the Palestinian-Israeli conflict and the partly related so-called cultural decolonisation. This broader, ideologically oriented effort also applied before the introduction of the law.

Re 3. More effective protection of property rights

More effective protection of the right to property refers to the more frequent use of the criminal route to achieve eviction ('enforce squatting ban'). It appears that the share of evictions through this criminal route did not increase in the reference year 2023 compared to 2021, the reference year for the baseline measurement. With this, this goal does not seem to have been achieved for the time being.

Unintended effects

An unintended but expected effect of the new law is that the prosecutor's workload has become heavier for two reasons. First, under the new law, the making of a file (by the prosecutor) must now always be done, whereas under the old law this was only required if it came or appeared to come to summary proceedings (by the state attorney). Secondly, under the new law, an authorisation must also be sought for evictions with urgent necessity, whereas previously, in the case of 'special circumstances' - which under the new law is the same as 'urgent necessity' - summary proceedings were not an issue. As a result, under the old law, no file had to be produced in those cases; under the new law, it does, albeit retrospectively.

Another possible unintended effect of the new law relates to the legal position of the squatters where it concerns the - allegedly - often limited preparation time the lawyer has for the hearing at the examining magistrate's court, as also mentioned above when discussing the legal position of the squatters; described from the lawyer's side as a violation of Article 6 ECHR.

Final evaluation

The final evaluation of the Squatting Ban Enforcement Act will pay more extensive attention to the effects of the law. There will then be more experience with the implementation of the law, so that it will be possible to map out even better exactly how it works out in practice. As part of this

final round of evaluation, it is planned that, as far as the effects are concerned, we will then speak not only with representatives of implementing bodies and the legal profession, but also with policy officials from the ministry, criminal law experts, property owners and squatters.